



STATE OF IOWA
MASTER AGREEMENT

MA# 005 A63311 WSCA 2
EFFECTIVE BEGIN DATE: 01-01-2005
EXPIRATION DATE: 08-31-2007
PAGE: 1 of 4

BUYER : ASHLEY SUPER
ashley.super@iowa.gov
515-281-7073

FOB

PAYMENT TERMS (%): DAYS:

VENDOR:

IBM Corporation
PO Box 945684

Atlanta, GA 30394-5684
USA

VENDOR CONTACT:

AMY BROCKHOHN

PHONE: 319-399-3840

EMAIL: ajbrock@usibm.com

VENDOR #: 13087198500

EXT:

DESCRIPTION OF ITEMS CONTRACTED

COMPUTERS, ACCESSORIES per attached documents

This Agreement replaces CT94-00151. Reference:

<http://www.mmd.admin.state.mn.us/wsca/> and:

<http://www-.ibm.com/gold/portal/servlet/gold/wscanaspo/Welcome>

Agency to select ôSpecial Instructions Tabö that corresponds to the re-seller which should receive credit for the sale. If no re-seller is involved, choose # IBM1, "No Preference".

RENEWAL PERIODS

FROM 09-01-2007 TO 08-31-2008

FROM 09-01-2008 TO 08-31-2009

THRESHOLDS

MINIMUM ORDER AMOUNT:

MAXIMUM ORDER AMOUNT:

NOT TO EXCEED AMOUNT:

AUTHORIZED DEPARTMENT

ALL

SUB Political Sub-divisions

TOTAL \$0.00

VENDOR:

APPROVED BY:

THIS MA IS SUBJECT TO THE TERMS AND
CONDITIONS ATTACHED HERETO.
PLEASE SEE ATTACHMENTS FOR
FURTHER DESCRIPTIONS.



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LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
1	0.00000		204	\$0.000000
				\$0.000000
			COMPUTER HARDWARE AND PERIPHERALS FOR MICROCOMPUTERS	
			Agency to fax PO to:	
			319-294-0315	
2	0.00000		206	\$0.000000
				\$0.000000
			COMPUTER HARDWARE AND PERIPHERALS FOR MINI AND MAIN FRAME CO	
			Agency to fax PO to:	
			319-294-0315	
3	0.00000		207	\$0.000000
				\$0.000000
			COMPUTER ACCESSORIES AND SUPPLIES	
			Agency to fax PO to:	
			319-294-0315	
4	0.00000		91828	\$0.000000
				\$0.000000
			Computer Hardware Consulting	
			Agency to fax PO to:	
			319-294-0315	



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TERMS AND CONDITIONS

Incorporation

The Request for Proposal and/or bid documents for this project and the vendor's proposal in response to the RFP or Bid together with any clarifications, attachments, appendices, or amendments of the State or the Vendor are incorporated into this Contract by reference as if fully set forth in this Contract.

Remedies upon Default

In any case where the vendor has failed to deliver or has delivered non-conforming goods and/or services, the State shall provide a cure notice. The notice to cure shall state the maximum length of time the vendor has to cure. If after the time period stated in the notice to cure has passed, the vendor continues to be in default, the State may procure goods and/or services in substitution from another source and charge the difference between the contracted price and the market price to the defaulting vendor. The State's Attorney General shall be requested to make collection from the defaulting vendor.

Force Majeure

Force majeure includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party affected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. These provisions of force majeure also apply to subcontractors or suppliers of the Vendor. Force majeure does not include financial difficulties of the Vendor or any associated company of the Vendor, or claims or court orders that restrict the Vendor's ability to deliver the goods or services contemplated by this Agreement. Neither the Vendor nor the State shall be liable to the other for any delay or failure of performance of this Agreement caused by a force majeure, and not as a result of the fault or negligence of a party.

Subcontractors

The successful vendor shall be responsible for all acts and performance of any subcontractor or secondary supplier that the successful vendor may engage for the completion of any contract with the State. A delay that results from a subcontractor's conduct, negligence or failure to perform shall not exempt the vendor from default remedies. The successful vendor shall be responsible for payment to all subcontractors and all other third parties.

Termination-Non-Appropriation

Notwithstanding any other provision of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the State to appropriate funds, discontinuance or material alteration of the program for which funds were provided, then the State shall have the right to terminate this contract without penalty by giving not less than thirty (30) days written notice documenting the lack of funding, discontinuance or program alteration.

Immunity of State/Fed Agencies

The vendor shall defend and hold harmless the State and Federal funding source for the State of Iowa from liability arising from the vendor's performance of this contract and the vendor's activities with subcontracted and all other third parties.

Assignment

Vendors may not assign contracts or purchase orders to any party (including financial institutions) without written permission of the General Services Enterprise - Purchasing.

Anti-Trust Assignment

For good cause and as consideration for executing this purchase order, the vendor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa, relating to the particular goods or services purchased or acquired by the State of Iowa pursuant to the using State of Iowa agency.

Delivery and Acceptance

When an award has been made to a vendor and the purchase order issued, deliveries are to be made in the following manner.

A. Deliveries - All deliveries are to be made only to the point specified on the purchase order. If delivery is made to any other point, it shall be the responsibility of the vendor to promptly reship to the correct location. Failure to deliver procured goods on time may result in cancellation of an order or termination of a contract at the option of the State.

B. Delivery Charges - All delivery charges should be to the account of the vendor whenever possible. If not, all delivery charges should be prepaid by vendor and added to the invoice.

C. Notice of Rejection - The nature of any rejections of a shipment, based on apparent deficiencies disclosed by ordinary methods of inspection, will be given by the receiving agency to the vendor and carrier within a reasonable time after delivery of the item, with a copy of this notice to the General Services Enterprise - Purchasing. Notice of latent deficiencies which would make items unsatisfactory for the purpose intended may be given by the State of Iowa at any time after acceptance.

Delivery and Acceptance (cont)

D. Disposition of Rejected item - The vendor must remove at the vendor's expense any item rejected by the State. If the vendor fails to remove that rejected item, the State may dispose of the item by offering the same for sale, deduct any accrued expense and remit the balance to the vendor.

E. Testing After Delivery - Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, vendors will be notified in writing that a special test is being made and that payment will be withheld until completion of the testing process.

Title to Goods

The vendor warrants that the goods purchased hereunder are free from all liens, claims or encumbrances.

Indemnification

To the extent that goods are not manufactured in accordance with the State's design, the vendor shall defend, indemnify and hold harmless the State of Iowa, the State's assignees, and other users of the goods from and against any claim of infringement of any Letter Patent, Trade Names, Trademark, Copyright or Trade Secrets by reason of sale or use of any articles purchased hereunder. The State shall promptly notify the vendor of any such claim.

Nondiscrimination

The vendor is subject to and must comply with all federal and state requirements concerning fair employment and will not discriminate between or among them by reason of race, color, religion, sex, national origin or physical handicap.

Warranty

The vendor expressly warrants that all goods supplied shall be merchantable in accordance with the Uniform Commercial Code, Section 2-314 and the Iowa Code, Section 554.2314.

Taxes



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The State of Iowa is exempt from the payment of Iowa sales tax, motor vehicle fuel tax and any other Iowa tax that may be applied to a specified commodity and/or service. Contractors performing construction activities are required to pay state sales tax on the cost of materials. The Iowa Department of Revenue exemption letter will be furnished to a vendor upon request.

Hazardous Material

All packaging, transportation, and handling of hazardous materials shall be in accordance with applicable federal and state regulations including, but not limited to, the Material Safety Data Sheet provision of O.S.H.A. Hazard Communication Standard 29CFR 1910.1200, and Iowa Administrative Code, Chapter 567.

Public Records

The laws of the State of Iowa require procurement records to be made public unless exempted by the Code of Iowa.

Miscellaneous

The terms and provisions of this contract shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this contract shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa. If however, jurisdiction is not proper in Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, providing that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit or liability, which may be available to the State of Iowa.

If any provision of this contract is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

Records Retention

The vendor shall maintain books, records, and documents which sufficiently and properly document and calculate all charges billed to the State of Iowa throughout the term of this Agreement for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The vendor shall at, no charge, permit the Auditor of the State of Iowa, or any authorized representative of the State (or where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government) to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the vendor relating to orders, invoices, or payments documentation or materials pertaining to this Agreement.

Independent Contractor

The vendor is an independent contractor performing services for the State of Iowa, and as such shall not hold itself out as an employee or agent of the State.

Performance Monitoring

For all service contracts, the requirements of Iowa Code sections 8.47 shall be incorporated into final terms and conditions of the contract.

N30

NET 30 DAYS

PARTICIPATING ADDENDUM TO
COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES
WSCA/NASPO MASTER PRICE AGREEMENT
with
IBM Corporation
Contract Number A63311

State of Iowa

1. Scope

Within the State of Iowa, all state agencies, state facilities, cities, counties or education entities or any entity funded in part with tax dollars, are eligible purchasers and authorized to purchase products and services under the terms of this price agreement.

2. Changes:

- A. Without affecting the approved product prices or discounts specified in the WSCA/NASPO Master Price Agreement, the Contractor shall provide to the State of Iowa a 1.00% rebate on all sales made within the State of Iowa against this agreement. The rebate is to be paid quarterly to The Iowa Department of Administrative Services, General Services Enterprise – Purchasing, Hoover State Office Building, Level A, Des Moines, IA 50319.
- B. The Contractor shall provide an electronic detailed quarterly report on all sales made against this agreement within the State of Iowa to the State's primary contract below. The report file format shall be Microsoft Excel compatible format. The report at minimum shall include the date of sale, customer name and address, product description, quantity, invoice number, unit and extended invoice prices.
- C. Contractor's stated prices on the Contractor's approved State of Iowa WSCA/NASPO e-Store web site shall be discounted using the discounts and price lists approved and agreed to with WSCA/NASPO under the Master Price Agreement. The stated discounts are considered to be the minimum discount offered. The Contractor may offer, within written quotes, a higher discount than the approved minimum discount for volume purchases or for competitive reasons.

3. Primary Contacts:

The primary participating entity contact for this participating addendum is as follows:

Ashley Super, Purchasing Agent III
Iowa Department of Administrative Services,
General Services Enterprise
Hoover State Office Building, Level A
Des Moines, IA 50319
Ph: 515-281-7073 Direct
Fax: 515-242-5922
Email: Ashley.super@iowa.gov

The primary Contractor contact for this participating addendum is as follows:

James Schroeder
IBM Corporation
4263 Commercial St. SE, Suite 100, Salem, OR 97302
Ph: 503.399.3825 (TL284)
Fax: 503.399.3793 (TL 284)
E-mail: jschroed@us.ibm.com

4. Servicing Subcontractors:

Only those IBM Business Partners authorized by IBM, as listed on the IBM WSCA/NASPO website, are eligible to support the IBM WSCA/NASPO Master Price Agreement. IBM Business Partners are only authorized to quote to the Participating Entity the products and pricing specified by IBM for the WSCA/NASPO Master Price Agreement. Eligible products include ThinkCentre commercial desktop systems, ThinkPad notebooks, ThinkVision Products, IBM options, and Express Models, eServer xSeries and IntelliStation Products.

All Participating Entity orders and payments are to be issued directly to IBM. Each Purchase Order, at the time of order placement, must include the quoting Business Partner's Location ID (LOCID), if a Business Partner has been used, and must identify the WSCA/NASPO Master Price Agreement number. Inclusion of the LOCID on the Purchase Order will result in a fee payment to the Business Partner. Such fee payment will not affect the pricing specified in the WSCA/NASPO Master Price Agreement.

IBM may add or delete eligible Products upon 30 days' written notice to the Participating Entity, and written approval by the Participating Entity. IBM may also add or delete eligible Business Partner authorizations at its discretion with 30 days written notice to the Participating Entity. Business Partner changes will be posted to the WSCA/NASPO website 30 days after the date of notification.

All orders are to be issued directly to:

IBM Corporation
Western States Contracting Alliance
WSCA-YE085
7100 Highlands Parkway
Smyrna, GA 30082

And all payments are to be issued to:

IBM Corporation
PO Box 945684
Atlanta, GA 30394-5684

The Master Price Agreement Number "A63311" MUST be shown on all Purchase Orders issued against this Agreement.

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by the State of Iowa below.

State of Iowa

IBM Corporation, Contractor

by: Debbie O'Leary

Name: Debbie O'Leary

Title: ADMINISTRATOR, DAS GSE

Date: 12/22/, 2004

by: Amy J. Brockhohn

Name: Amy J. Brockhohn

Title: Client Executive

Date: 12/17/2004

IBM Iowa WSCA Contract Reseller Information

Instr Code #	Instruction Name	Details
IBM1	IBM - No Reseller	Agency to fax PO to: 319-294-0315
IBM2	IBM - Midland	Credit Sale to: Midland Computer, 611 E 2nd St Des Moines Ia 50309 Phone 515-243-3400 Fax 515-277-9604; Agency to fax PO to: 319-294-0315 and copy Midland.
IBM3	IBM - Pomeroy	Credit Sale to: Pomeroy Computer, 1408 Locust St Des Moines Ia 50309-3094 Phone 515-241-3000 Fax 515-241-3037; Agency to fax PO to: 319-294-0315 and copy Pomeroy.
IBM4	IBM - Insight	Credit Sale to: Insight 6820 S Harl Ave Tempe, Az 85283 Phone 800-467-4448 Ext 5422 Fax 480-760-9060; Agency to fax PO to: 319-294-0315.
IBM5	IBM - ACS	Credit Sale to: ACS 3737 Woodland Ave, Ste 315 W Des Moines, Ia 50266; Agency to fax PO to: 319-294-0315.
IBM6	IBM - Vital	Credit Sale to: Vital Support, 11191 Aurora Ave Urbandale Ia 50322 Attn: Jim Strait Phone: 515-334-5765 Fax: 515-334-5757; Agency to fax PO to: 319-294-0315.
IBM7	IBM - Erb's	Credit Sale to: Erbs Business Machines 4935 Bowling St. SW, Cedar Rapids, IA 52404-5019 Phone 319-364-5159 Fax 319-364-2738 Email: mbrogan@erbs.com; Agency to fax PO to: 319-294-0315.

Enterprise #4669900 IBM-IOWA PUBLIC SECTOR / HIGHER ED ACCOUNT TEAM					as of Jan 26, 2005		
ACCOUNT MANAGEMENT							
NAME	RESPONSIBILITY	LOCATION	BUS. PHONE	ALT PHONE	FAX	CELL	INTERNET ID
AMY BROCKHOHN	GOVT, K12, HIGHER ED CLIENT EXECUTIVE	CEDAR RAPIDS	515-283-2872	319-294-0643	515-283-2872	319-270-3993	AJBROCK@US.IBM.COM
JOER BOMBASE	GOVT TELECOVERAGE TERRITORY REP	ATLANTA	770-863-1170	800-426- 1751 x1170	800-242-6329		BOMBASE@US.IBM.COM
JAMIE WALL	K-12, HIGHER ED TELECOVERAGE TERRITORY REP	ATLANTA	770-863-2183	800-426- 1751x2183	800-242-6329		JAMIEWAL@US.IBM.COM
DEAN GULSVIG	GOVT, K12, HIGHER ED, HLTH CLUSTER UNIT EXEC	MINNEAPOLIS	612-397-2574		763-519-1930	612-859-9915	DEAN.GULSVIG@US.IBM.COM
JIM SCHROEDER	IBM WSCA RELATIONSHIP REP	SALEM	503-399-3825		503-399-3793		JSCHROED@US.IBM.COM
HARDWARE TECHNICAL SALES SUPPORT							
NAME	RESPONSIBILITY	LOCATION	BUS. PHONE	ALT PHONE	FAX	CELL	INTERNET ID
ROB PETERSON	SERVER SOLUTION MANAGER, all servers and storage	MINNEAPOLIS	612-397-5017		612-397-6037	612-747-9456	RWPETER@US.IBM.COM
JULIE CRAY	RS/6000 SPECIALIST (pSeries)	CEDAR RAPIDS	515-283-2859	319-337-6623	319-337-6716	319-400-3841	JCCRAY@US.IBM.COM
TRISH FROESCHLE	AS/400 SPECIALIST (iSeries)	DAVENPORT	309-797-7475	563-355-5627	309-797-7485	563-349-4967	PAFROES@US.IBM.COM
BILL MORRISON	STORAGE SPECIALIST (Disk and Tape)	OMAHA	402-399-4012	972-345-0157	402-399-4308	972-345-0157	WMORRISN@US.IBM.COM
MATT BERKLAND	SPECIALIST Disk and Tape	DES MOINES	515-283-2849		515-283-2913	515-669-9936	MBERKLAN@US.IBM.COM
PAUL SPAGNOLO	CERTIFIED STORAGE FTSS	OMAHA	402-399-4003		402-399-4308	402-301-6331	PGSPAGN@US.IBM.COM
TODD BOGENRIEF	PC SERVER SPECIALIST (xSeries)	DES MOINES	515-283-2854	515-963-8244	515-283-2913	515-490-6102	BOGENRI@US.IBM.COM
GAVIN NABER	xSERIES SERVER HIGH END TELESales	TORONTO	416-383-7597				GAVINN@CA.IBM.COM
ROB TOTTON	xSERIES SERVER LOW END TELESales	TORONTO	416-383-5118				RTOTTON@CA.IBM.COM
RON KROEHLER	PC/LENOVO MARKETING SPECIALIST	MINNEAPOLIS	612-397-2269	763-424-8742	763-424-3289	612-325-5797	KROEHLER@US.IBM.COM
KERWIN SIMS	PC SALES INSIDE SPECIALIST	ATLANTA	770-863-1013	800-426- 1751 x31013	800-242-6329		SIMSK@US.IBM.COM
ANTOINE STANFORD	PC DIRECT SALES FOR K- 12	TEMPE	800-656-0833	EXT. 6412			ASTANFOR@IBM4PCS.COM

BART HAMILTON	PC DIRECT SALES FOR HIGHER ED	TEMPE	800-656-0833	EXT. 6215			BHAMILTO@IBM4PCS.COM
FRED TAFOYA	PC DIRECT SALES FOR HIGHER ED	TEMPE	800-656-0833	EXT. 6468			FTAFOYA@IBM4PCS.COM
KEVIN CONOVER	PC SERVER TECHNICAL SPECIALIST	OMAHA	402-399-4004	402-894-9834	402-399-4308	402-290-0811	KCONOV@US.IBM.COM
JOE MCGINNIS	CONTINUOUS FEED PRODUCTION PRINTER SPEC.	MINNEAPOLIS	612-397-6121	952-401-6060		612-701-9766	JOSEPHMC@US.IBM.COM
DAVE RANTALA	DISTR PRINT SPEC (workgroup, impact, mid-range, etc)	MINNEAPOLIS	612-397-6120	952-943-2524	952-943-2534	612-669-6746	DRANTALA@US.IBM.COM
MARLOWE WHITE	POST INSTALL xSERIES CUSTOMER SAT MGR	BOCA RATON	612-397-5511	561-417-0248	612-397-5511	561-414-6323	MARLOWEW@US.IBM.COM
CISCO PURCHASES	IBM ED & INST PROJECT SUPPORT OFFICE	ILLINOIS	800-706-9622		732-210-0275		IBMEANDI@US.IBM.COM
SOFTWARE SOLUTION SPECIALISTS							
NAME	RESPONSIBILITY	LOCATION	BUS. PHONE	ALT PHONE	FAX	CELL	INTERNET ID
MICHAEL KENNY	SOFTWARE SALES REP	DES MOINES	515-283-2847	515-277-6370	515-283-2913	515-480-3783	MIKENNY@US.IBM.COM
DIANE MEAD	SOFTWARE SALES REP BACKUP	OMAHA	402-399-4185			402-689-6450	DEMEAD@US.IBM.COM
ANGELO HALKIAS	SOFTWARE SALES REP INSIDE SALES	TORONTO	416-383-5197	800-426-4968 x35197	416-383-7788		AHALKIAS@CA.IBM.COM
CHAD MITCHELL	DATABASE SPECIALIST	DES MOINES	515-283-2881	515-251-5951	515-283-4333	515-991-5268	CHAD.MITCHELL@US.IBM.COM
AARON BELL	DATA MANAGEMENT SALES SPECIALIST	DES MOINES	515-283-2858		515-283-4333	515-865-8097	AARON.BELL@US.IBM.COM
CAROL LLOYD	CONTENT MANAGER SPECIALIST	ST LOUIS	314-252-4827		314-252-4387	636-262-2227	CALLOYD@US.IBM.COM
JIM WESTFALL	WEBSPPHERE, MQ SPECIALIST	DES MOINES	515-283-4370	515-834-2571	515-283-4333	515-229-3185	JIM.WESTFALL@US.IBM.COM
BOB KHAROUF	WEBSPPHERE VOICE RESPONSE/AIX SALES	DES MOINES	515-283-2899	515-961-7630	515-283-4333	515-988-0686	RCKHARO@US.IBM.COM
RICHARD KING	WEBSPPHERE VOICE SERVER SALES	CLEVELAND	877-722-4092	877-722-4092	877-722-4092	440-759-5945	RCKING@US.IBM.COM
GREGG HEIMAN	LOTUS ACCOUNT MANAGER (PORTAL/WORKPL)	OMAHA	402-399-4018	402-850-3467	402-697-5085	402-850-3467	GREGG_HEIMAN@US.IBM.COM
STEPHEN WINSLOW	LOTUS COMPETITIVE MESSAGING	CHICAGO	312-245-6473	847-323-4670		847-323-4670	STEPHEN_WINSLOW@US.IBM.COM
ERIC D LARSON	LOTUS TECHNICAL SPECIALIST	OMAHA	402-399-4495		708-575-9212		ERIC_LARSON@US.IBM.COM
CHRIS RAPS	TIVOLI STORAGE PRODUCTS	MINNEAPOLIS	763-519-1760	612-810-5152	763-519-1930	612-810-5152	RAPSCC@US.IBM.COM

NARENDRA SWAMY	TIVOLI SECURITY PORTFOLIO SYS ENGINEER	CHICAGO	312-245-4678		312-245-4678	312-961-9718	SWAMYN@US.IBM.COM
SCOTT PEDERSEN	S/390 (zSERIES) SOFTWARE REP	SPRINGFLD IL	217-793-5840		217-793-5662	217-341-5903	SPPEDER@US.IBM.COM
JOEL PECH	RATIONAL REP	DES MOINES	515-283-4306			515-480-0783	JLPECH@US.IBM.COM
RANDY GRAY	CANDLE REP	OMAHA	402-896-8824		402-896-8825	402-689-2294	GRAYRA@US.IBM.COM
CONSULTING, MAINTENANCE AND INTEGRATION SERVICES							
NAME	RESPONSIBILITY	LOCATION	BUS. PHONE	ALT PHONE	FAX	CELL	INTERNET ID
HARDWARE SERVICE	SERVICE DISPATCH		800-IBM-SERV				
SOFTWARE SUPPORT	PASSPORT ADV, SUPPORTLINES, SWMA		800-IBM-SERV				www.ibm.com/software/support
PC HELP CENTER	PC SERVICE / PC HELP		800-IBM-SERV				
JEFF MAAK	HARDWARE SVC MANAGER (ITS) CENTRAL IOWA	DES MOINES	515-283-2835	515-957-8776	515-283-4333	515-988-6225	JWMAAK@US.IBM.COM
JOHN DEISENROTH	HARDWARE SVC MANAGER (ITS) EASTERN IOWA	MOLINE	309-797-7486	309-235-1297	309-797-7485	309-235-1297	JCDEISE@US.IBM.COM
KC WHITE	PUB SECTOR SVCS INFRASTRUCTURE PRINCIPAL	CHICAGO	217-793-5770	217-632-5070	217-793-5770	217-972-2173	KCWHITE@US.IBM.COM
SHELL DAVIES	PUB SECTOR CONSULTING SERVICES PRINCIPAL	LITTLE ROCK	501-370-2278		501-370-2232	501-352-3187	SHDAVIES@US.IBM.COM
BRYAN DUNNE	INSTALLATION PLANNING REP (ITS)	CEDAR RAPIDS	800-426-7378	319-329-2314	319-366-3232	319-329-2314	BJDUNNE@US.IBM.COM
TOM CLIFFORD	MAINTENANCE SALES SPECIALIST	MINNEAPOLIS	877-793-9381	612-840-8241	877-793-9381	612-840-8241	CLIFFORT@US.IBM.COM
CHUCK TAYLOR	DISASTER RECOVERY/BUSINESS RECOVERY	OMAHA	402-399-4171	402-423-2497			CCTAYLOR1@US.IBM.COM
KAREN Y SMITH	PC SELF-MAINTAINER PROGRAM	RALEIGH	919-248-3296		845-491-2535		KYSMITH@US.IBM.COM

EDUCATION SERVICES							
NAME	RESPONSIBILITY	LOCATION	BUS. PHONE	ALT PHONE	FAX	CELL	INTERNET ID
BRIAN HASSLER	EDUCATION SALES SPECIALIST	ATLANTA	770-863-1495	800-426-8322	800-426-9006		BHASSLER@US.IBM.COM
EDUCATION	CLASS REGISTRATION		800-426-8322				
ORDER PROCESSING/BILLING/LEASING							
NAME	RESPONSIBILITY	LOCATION	BUS. PHONE	ALT PHONE	FAX	CELL	INTERNET ID
BECKY CHRISTMAN	SALES RELATIONSHIP REP	MADISON	877-499-0876		877-499-0876		RSCHRIS@US.IBM.COM
TERESA HESS	CUSTOMER RELATIONSHIP REP (CONTRACTS, A/R)	PEORIA	877-293-7933	877-293-7933	801-730-6046		TAHESS@US.IBM.COM
ALAN ANTHONY	IBM GLOBAL FINANCE REP (ICC)	CHARLESTON	304-347-7263		304-347-7212	304-610-0202	AANTHONY@US.IBM.COM
DAVID SLATTERY	IGF END-OF-LEASE BUYOUTS	CHICAGO	630-568-1284	952-324-745			DFSLATT@US.IBM.COM
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IBM PARTS	ORDER ENTRY		800-388-7080				
PUBLICATIONS	ORDER ENTRY		800-879-2755				
BUSINESS PARTNERS - NOTE: ALPHABETIZED & NOT ALL INCLUSIVE RESPONSIBILITY							
NAME		LOCATION	BUS. PHONE	ALT PHONE	FAX	CELL	INTERNET ID
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WSCA/NASPO Contract Administration

112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155

Fax: 651.297.3996, TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

WSCA-NASPO COMPUTER CONTRACTS

BULLETIN NO. 1

IBM SALE OF PC DIVISION TO LENOVO

Questions and Answers surrounding this sale

Question: How does this affect the Master Price Agreement (MPA) #A63311 signed by IBM Corp?

Answer: There are several processes already being put in place by the State of Minnesota to address this transaction between IBM and Lenovo.

First, IBM's MPA has been amended to delete the specific product lines that were a part of their PC Division; in particular, ThinkPad notebooks, ThinkCentre desktops, and ThinkVision monitors.

Second, a new MPA #A74813 has been signed with Lenovo for these specific product lines. The terms and conditions in the new MPA are identical in all respects to the MPA that was signed with IBM.

Question: How does the amendment to IBM's MPA affect the Participating Addenda (PA) that have been signed by each Participating Entity.

Answer: The PA is an extension of the MPA and therefore incorporates all of the terms and conditions of the MPA as originally written and as amended. Therefore, unless the PA that your entity has signed has specific language requiring an assignment agreement or amendment, you DO NOT have to do anything to your PA.

Question: Do we need to sign new Participating Addenda with Lenovo.

Answer: Yes. However, IBM and Lenovo have already agreed that there will not be any need to renegotiate any of the terms and conditions in the new PA you will sign with



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Lenovo. IBM has also agreed to send each Participating Entity new PA to sign, which will be identical in all respects, including the signature blocks, to the PA that was signed with IBM.

Question: How will we access the Lenovo product line?

Answer: A new url will not be set up for the Lenovo product line. You will be able to access these products by going to the current IBM website. IBM will develop a special link from their home page to the products that Lenovo will be selling.

Question: When will the transition be effective.

Answer: The cut-over to the new Contract is scheduled for July 1, 2005. This should give everyone ample time to sign a new PA, and for IBM to make the necessary changes to their website. The new MPA and contact information for Lenovo will be posted on the State of Minnesota website before that date also.

At some point between now and July 1, 2005 you will be asked to begin to split your orders to IBM between IBM products and future Lenovo products to keep from creating problems at the cut-over. More information will follow.

If you have any questions, please e-mail them to one of us:

Bernadette Kopscihke - Contract Administrator

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Kate Offerdal - Contract Analyst

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Paul Stembler - Procurement Manager

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WESTERN STATES CONTRACTING ALLIANCE
MASTER PRICE AGREEMENT
for
COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES
IBM CORPORATION
Number A63311

This Agreement is made and entered into by IBM Corporation, 4263 Commercial Street, Salem, OR, 97302, ("Contractor") and the Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Participating States and Participating Entities.

RECITALS

WHEREAS, the State has the need to purchase and the Contractor desire to sell; and,

WHEREAS, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided. No type of Lease transactions are allowed through this Agreement.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum, with the prior approval of the WSCA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

1. Definitions

"Announced Promotional Price" are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

"Contract" means an agreement for the procurement of items of tangible personal property or services.

"Contract Administrator" means an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

"Contractor" shall mean successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof.

"Consumables" that are required for the operation of Equipment offered or supplied are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

"CPV Member" is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

"CPV Program" The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the Commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

"Cumulative Volume Discount" means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement.

"Customer-set-up Machine" is an IBM Machine that the Purchasing Entity installs according to IBM's instructions.

"Date of Installation" is the following:

1. For an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it, or, if the Purchasing Entity defers installation, makes it available to the Purchasing Entity for subsequent installation by IBM;
2. For a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
3. For a Program –
 - a. basic license, the later of the following:
 - (i) the day after its testing period ends; or
 - (ii) the second business day after the Program's standard transit allowance period,
 - b. copy, the date (specified in a Transaction Document) on which IBM authorizes the Purchasing Entity to make a copy of the Program, and
 - c. chargeable component, the date the Purchasing Entity distributes a copy of the chargeable component in support of the Purchasing Entity's authorized use of the Program.

"Documentation" refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

"E-Rate" is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

"Educational Discount Price" means the price offered in a nationally announced promotion, which is limited to educational customers only, as defined by the Contractor.

"Energy Star®" is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

"Enterprise" is, if the Purchasing Entity is a state or a state agency, institution or department, the state of the Purchasing Entity; if any other political subdivision (colleges, school districts, counties, cities, etc.,) the Enterprise is the political subdivision.

"Equipment" means workstations, desktop, laptop (includes Tablet PC's), and handheld (PDA) devices, servers, computing hardware, including upgrade components such as memory, storage drives, and spare parts.

"FCC" means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

"General Price Reduction Price" means the price offered to consumer, business or governmental purchaser at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

"ISO 14001" is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to www.iso.org.

"Lead State" means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

"Licensed Internal Code" (called "LIC") is Machine Code used by certain Machines IBM specifies (called Specific Machines).

"Machine" is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that IBM may provide to the Purchasing Entity.

"Machine Code" is microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine.

"Mandatory" The terms "must" and "shall" identify a mandatory item or factor.

"Manufacturer" means the company that designs, assembles, and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer's name(s) shall appear on the computer equipment. The Contractor shall provide warranty service and maintenance for equipment covered by this Agreement as well as a Takeback Program.

"Master Price Agreement" means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor's products and/or services by Purchasing Entities. The "master price agreement" is a permissive price agreement. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

"Materials" are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that IBM may deliver to the Purchasing Entity as part of a Service. The term "Materials" does not include Programs, Machine Code, or LIC.

"Materials Management Division" or "MMD" means the procurement office for the State of Minnesota or a designated representative.

"NASPO" means the National Association of State Procurement Officials

"Participating Addendum" means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

"Non-IBM Program" is a Program licensed under a separate third party license agreement

"Other IBM Program" is an IBM Program licensed under a separate IBM license agreement, e.g., IBM International Program License Agreement.

"Participating State" or **"Participating Entity"** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

"PDA" means a Personal Digital Assistant. Refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which are later entered into a larger computer. **NOTE: For this Agreement, all Tablet PC's are NOT considered PDA's.**

"Peripherals" include but are not limited to storage, printers (including multifunction network print/fax/scanner devices), scanners (used in conjunction with computing equipment), monitors, keyboards, uninterruptible power supplies and accessories. Adaptive/Assistive technology devices are included as well as configurations for education. A third party may manufacture peripherals. The Contractor shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

"Per Transaction Multiple Unit Discount" means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

"Political Subdivision" means local public governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

"Price Agreement" means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

"Procurement Manager" means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

"Product(s)" means personal computer equipment, peripherals, LAN hardware Software, and Network Storage devices, but not unrelated services.

"Products and Services Schedule Prices" mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.

"Program" is the following, including the original and all whole or partial copies:

1. machine-readable instructions and data;
2. components;
3. audio-visual content (such as images, text, recordings, or pictures); and
4. related licensed materials.

The term "Program" includes any IBM Program, or Non-IBM Program that IBM may provide to the Purchasing Entity. The term does not include Machine Code, LIC, or Materials.

"Purchase Order" means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

"Purchasing Entity" means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a Agreement for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

"Services" are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

"Servicing Subcontractor" or **"Reseller Agent"** or **"Subcontractor"** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program.**

"Specifications" is a document that provides information specific to a Product. IBM provides an IBM Machine's Specifications in a document entitled "Official Published Specifications."

"Specified Operating Environment" is the Machines and programs with which a Program is designed to operate, as described in the Program's Specifications.

"Standard Configurations" mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

"State Procurement Official" means the director of the central purchasing authority of a state.

"Storage Solution/Auxiliary Storage" means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS); Storage Area Networks (SAN); Content Addressed Storage (CAS); and/or Clustered Network Storage (CNS).

"Takeback Program" means the Contractor's process for accepting the return of the equipment or other products at the end of life.

"Trade In" refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

"Travel" means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

"Universal Resource Locator" or "URL" means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

"WSCA" means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

2. **Scope of Work**

The Contractor, or its approved subcontractor, shall accept purchase orders from and deliver computing system Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by the Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official. The Contractor is required to provide warranty and maintenance services on equipment that is purchased. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. **Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this Agreement upon receipt of the product by the Purchasing Entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is

available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

4. Permissive Price Agreement and Quantity Guarantee

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. Order of Precedence

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions conflicting with this Agreement or the Participating Addendum will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document P-1331 and Addenda thereto; and
- F. Contractor's proposal including any written clarifications and/or best and final offer.

6. Payment Provisions

All payments under this Agreement are subject to the following provisions:

A. Acceptance

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. Acceptance shall occur contemporaneous with passage of title as stated in paragraph 3 above.

B. Payment of Invoice

1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments are due upon receipt and payable within thirty (30) days, or in accordance with the applicable laws of the Purchasing Entity.
2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. Payments may be made via a Purchasing Entity's "Purchasing Card".
3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes.

Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

D. Invoices

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration. Invoices shall match the line items on the Purchase Order.

7. Agreement Term

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota or on September 1, 2004, whichever is later, through August 31, 2007 (3 years). The Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

A. Termination for Convenience

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

B. Termination for Cause

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

D. The Contractor's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

9. Non-Appropriation

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available

shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order, except for Services already performed or Products already delivered.

10. Shipment and Risk of Loss

- A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.
- B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or wrongful intentional act or omission of the Purchasing Entity.
- C. Unless otherwise arranged between the Purchasing Entity and Contractor, all shipments of Products should be shipped within three-to-five days by a reliable and insured shipping company.

11. Warranties

- A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties. In general, the Contractor warrants that:
 - 1. The Product will conform with the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
 - 2. The Product will meet any specifications provided in writing to or otherwise actually know by the Contractor when it advised the Purchasing Entity in writing about the Product's ability to meet those mandatory specifications.
 - 3. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
 - 4. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
 - a) Warranty for IBM Machines
 - b) Warranty for IBM Programs
 - c) Warranty for IBM Services
 - d) Warranty for Systems
- B. If Contractor modifies the warranties described in Exhibit A, even 10 days prior written notification to the Contract Administrator, the State may terminate the Contract at its sole discretion because a unilateral change in warranty terms may be contrary to the State's best interests. Such a termination is considered caused by the unilateral action of the Contractor and not by the State's protection of its interests.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

For purposes of this section, the term "Product" includes Materials, Machine Code and LIC.

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities against (a) any claim that any Product provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and (2) any claim arising from any alleged trade secret misappropriation by Contractor in the United States or Puerto Rico, and Contractor shall pay all costs, damages and attorneys' fees that a court finally awards or that are included in a settlement approved by Contractor as a result of any such claim. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
1. Give the Contractor prompt written notice of any claim;
 2. Allow the Contractor to control the defense or settlement of the claim; and
 3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products become, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
1. Provide a Purchasing Entity the right to continue using the Products;
 2. Replace or modify the Products or Services so that it becomes non-infringing; or
 3. Accept the return of the Products or give the Purchasing Entity a credit equal to: a) for a Machine, the Purchasing Entity's net book value provided it has followed generally-accepted accounting principles; b) for a Program, the amount paid by the Purchasing Entity or 12 months charges (whichever is less); and c) for Materials, the amount paid by the Purchasing Entity to IBM for the creation of the Materials.

This is IBM entire obligation to the Purchasing Entity regarding any claim of infringement.

- C. IBM has no obligation regarding any claim based on any of the following:
1. Anything the Purchasing Entity provides which is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by the Purchasing Entity or by a third party on the Purchasing Entity's behalf;
 2. The Purchasing Entity's modification of a Product, or a Program's use in other than its Specified Operating Environment;
 3. The combination, operation or use of a Product with other products not provided by IBM as a system, or the combination, operation or use of a Product with any product, data, apparatus, or business method that IBM did not provide, or the distribution, operation of use of a Product for the benefit of a third party outside the Purchasing Entity's Enterprise; or
 4. Infringement by a non-IBM Product or an Other IBM Program alone.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Per Transaction Multiple Unit Discount Price, or Standard Configuration Price. Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Cumulative, Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

14. Product and Service Schedule

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed price discount levels on file with the Contract Administrator for the following Products:
- Band 1: File/Print Servers, Mid-Range Servers

Band 2: Desktops, Laptops
Band 3: Printers, High speed; Medium speed; Desktop; Laptop
Band 4: Storage Solutions
LAN equipment and related software.
General Purpose Software

- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

15. Product Substitutions

A. Substitution of units/configurations

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator. This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Contract Administrator.

B. Addition of units/configurations

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.

16. Technical Support

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

17. Take back/Environment/Energy Efficiency Programs

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

- A. Take back/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are listed on the web site.
- B. Environment: Compliance with the European Unions' Directives, or other international directives; reduction/minimization/avoidance of the use of toxic and hazardous constituents; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan); ISO 14001 certification; and the use of recyclable, nontoxic packaging.
- C. Energy Efficiency: Products meet the Energy Star or other recognized programs for energy efficiency.
- D. Product labeling of compliance with Items B & C above, as well as identification of such information on the web site.

The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

18. Product Delivery

Contractor agrees to use commercially reasonable efforts to delivery Products to Purchasing Entities within 10 - 14 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

19. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot, industry-wide constraints, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

20. Records and Audit

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

21. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any Participating Entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or Participating Entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

22. Use of Servicing Subcontractors

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller/Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

23. Payments to Subcontractors

For Minnesota transactions, in the event the Contractor hires subcontractors to perform all or some of the duties of this Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any

such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

24. Indemnification

The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees.

25. Amendments

Agreement amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Agreement amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

26. Scope of Agreement

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

27. Severability

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

28. Enforcement of Agreement/Waivers

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the forbearing/indulging party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

29. Web Site Maintenance

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product

specifications and other aids in accordance with reasonable instructions provided by the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.

- B. The Contractor agrees to maintain and support Participating State and Entity Internet website for access to the specific Participating Entity PSS, as well as all other items listed in Item 29.A. listed above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

30. Equal Opportunity Compliance

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which it's primary place of business is located pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Agreement.

31. Limitation of Liability

The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder, loss of, or damage to data, lost profits, business, revenue, goodwill, or anticipated savings even if the Contractor has been advised of the possibility of such damages. Both parties agree that this Contract does not create any right or cause of action for any third party against the other except for third party claims that fit within the indemnification provision of this Contract.

32. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

33. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the Contract Administrator of changes in any Contractor key personnel, in writing, and in advance, if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

34. Release

Each party, upon final payment of the amount due under this Agreement, releases the other, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41. Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

35. Data Practices

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.
- D. The Contractor agrees to be bound by any statutorily required data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.
- E. Notwithstanding the above, the parties agree that any confidential information required to be exchanged will be done so under the terms of a signed confidentiality agreement. See attached Exhibit D.

36. Organizational Conflicts of Interest

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
 - a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
 - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
 - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

37. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

38. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

39. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

40. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

41. Survival

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. All notices shall be addressed as follows:

To MMD:

Department of Administration
Materials Management Division
Bernadette Kopischke, CPPB
Acquisition Management Specialist
50 Sherburne Avenue
112 State Administration Building
St. Paul, MN 55155
Fax: 651.297.3996

Email: bernie.kopischke@state.mn.us

To Contractor:

IBM Corporation
James Schroeder
WSCA National Program Manager
IBM Global Government Systems
4263 Commercial St. SE, Suite 100
Salem OR 97302
Fax: 503.399.3793 (TL 284)
Email: jschroed@us.ibm.com

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 43. The carrier for mail delivery and notices shall be the agent of the sender.

44. Reporting and Fees

A. Administration Reporting and Fees

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.
3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.

8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
 1. Consistent nonperformance of contractual requirements; or
 2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
 1. Exercise any remedy provided by law or equity;
 2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
 3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
 4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.

46. Audits

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
 1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. Extensions

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

48. Sovereign Immunity

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

49. Ownership

Prior to the issuance of a purchase order, the Contractor will specify Materials to be delivered to the Purchasing Entity and will identify them as being "Type I Materials," "Type II Materials," "Type III", or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

A. Ownership of Documents/Copyright for Type III Materials. Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State, and described in the Contract as a Type III Material, shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.

B. Rights, Title and Interest. Along with ownership of the materials, any and all copyrights in the copyrightable material will be assigned to the State. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where so agreed, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, or patents.

C. Definition of Material Types

Type I Materials are those, created during the Service performance period, in which the Purchasing Entity will have all right, title, and interest (including ownership of copyright). Contractor will retain one copy of the Materials. The Purchasing Entity grants Contractor 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on, Type I Materials and 2) the right to authorize others to do any of the former.

Type II Materials are those, created during the Service performance period or otherwise (such as those that preexist the Service), in which Contractor or third parties have all right, title, and interest (including ownership of copyright). Contractor will deliver one copy of the specified Materials to the Purchasing Entity. Contractor grants the Purchasing Entity an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within the Purchasing Entity's Enterprise only, copies of Type II Materials.

Type III Materials are those, created during the project, which you will own (including ownership of copyright). No license is granted to IBM with respect to Type III Materials. However, both parties are free to use any ideas, concepts, know-how, or techniques which are developed or provided by the other or jointly by both parties during a project. Both parties are free to enter into similar agreements with others and to develop and provide Materials or Services which are similar to those provided under this Agreement.

50. Prohibition Against Gratuities

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

51. Antitrust

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

52. Right to Publish

- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

53. Performance While Dispute is Pending

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

54. Hazardous Substances

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each delivery.

55. Customer Satisfaction/Complaint Resolution

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

56. Value Added Services

The Contractor is expected to provide such services as installation, training, and software imaging for ordering by the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

57. E-Rate Program

The Contractor's E-Rate identification number is SPIN #143005607

The Universal Service Administrative Company (USAC) maintains an Eligible Services List on its web site that categorizes services as (a) eligible for discounts, (b) not eligible for discounts, or (c) conditionally eligible for discounts (i.e., depending on details of how a service or component is utilized). The current listing of eligible services and products can be found at <http://www.sl.universalservice.org/reference/eligible.asp> and is current as of 10/13/2003. The SLD has indicated that there will be another update before the end of 2003.

To the extent IBM's participation in the E-rate program is consistent with its corporate strategy and direction, the Contractor shall continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

1. IBM CORPORATION

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: James C. Schroeder

Title: IBM WSCA/NASPO NATIONAL Pgm. Mgr.

Date: AUGUST 23, 2004

By: _____

Title: _____

Date: _____

2. MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopschke

Title: Acquisition Management Specialist

Date: 8/24/04

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: Brenda Willard

Date: 8/24/04

EXHIBIT A - ADDITIONAL WARRANTIES

A. Warranty for IBM Machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications. The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, IBM provides repair and exchange Service for the Machine, without charge, under the type of Service IBM designates for the Machine. If a Machine does not function as warranted during the warranty period and IBM is unable to either 1) make it do so or 2) replace it with one that is at least functionally equivalent, you may return it to IBM and your money will be refunded.

B. Warranty for IBM Programs

IBM warrants that each warranted IBM Program, when used in the Specified Operating Environment, will conform to its Specifications. The warranty period for a Program expires when its Program Service are no longer available. During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted Program for at least one year following its general availability. If a Program does not function as warranted during the first year after you obtain your license and IBM is unable to make it do so, you may return the Program and your money will be refunded. To be eligible, you must have obtained your license while Program Services (regardless of the remaining duration) were available for it.

C. Warranty for IBM Services

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document.

D. Warranty for Systems

Where IBM provides Products to you as a system, IBM warrants that they are compatible and will operate with one another. This warranty is in addition to IBM's other applicable warranties.

E. Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent that there has been misuse (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by you, or failure caused by a product for which IBM is not responsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

F. Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects. IBM will identify IBM Machines and Programs that it does not warrant.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EXHIBIT B - COMPLAINT RESOLUTION

A. Hardware and Software Support 1-800-IBM-SERV

1. The IBM support organization's goal is to ensure customer satisfaction by:
 - a. Responding to your calls within targeted guidelines.
 - b. Providing ongoing communication regarding your problem status through problem resolution.
 - c. Taking ownership of your call for support.
 - d. Providing a defined escalation process when management assistance is needed.
 - e. Maintaining our commitment to continuous improvement of our service processes.
2. IBM support gives you the ability to contact IBM and ask installation and usage related questions as well as make defect inquiries about eligible products. You have the option of voice (1-800-IBM-SERV) or electronic access (<http://www.ibm.com/support>) to a team of technical specialists. Support is available 24 hours per day, 7 days per week, 365 days per year.
3. For all eligible products, IBM can help you with:
 - a. General Support:
 - Usage and installation questions
 - Product compatibility and interoperability questions
 - Interpretation of product documentation
 - Diagnostic information reviews to help isolate the cause of a problem
 - Configuration samples
 - IBM and multivendor database searches
 - Planning information for software fixes
 - Defect Support
 - b. Electronic Support:
 - Submit problems and get answers electronically
 - View screens remotely
 - Submit documents electronically
 - View open problems that have been submitted
 - Search IBM's question and answer database
4. Before contacting support, you will need to gather information about the problem and have it on hand when discussing the situation with a specialist.
 - a. define the problem
 - b. gather background information
 - c. gather relevant diagnostic information
 - d. determine the business impact – assign a severity level
 - Severity 1 - Critical business impact, this indicates you are unable to use the program resulting in a critical impact on operations. This condition requires an immediate solution.
 - Severity 2 - Significant business impact, this indicates the problem is usable but is severely limited.
 - Severity 3 - Some business impact, this indicates the program is usable with less significant features (not critical to operations) unavailable.
 - Severity 4 - Minimal business impact, this indicates the problem causes little impact on operations or that a reasonable circumvention to the problem has been implemented.
5. When you call support to report an IBM software problem or update/gain status on a problem, your request will be routed to a technical specialist. For onsite support, IBM will attempt to diagnose and resolve the problem remotely before sending a technician onsite. Onsite response times vary dependent on purchased warranty and maintenance coverage options. IBM will use commercially reasonable efforts to respond by telephone to hardware and software service calls within two business hours during normal country business hours, and within two hours during off-shift hours for critical problems. Our initial response may result in resolution of your request, or it will form the basis for determining what additional actions may be required to achieve technical resolution of your request.

6. Whether you contact IBM by telephone or electronically, once logged, a unique problem management record (PMR) or Incident/Support case is created. Your PMR, Incident or Support Case is routed to a resolution team for handling. You may be transferred directly to the resolution team or your issue will be placed in a queue for call back. In either case, the next person you speak with will be a specialist in the appropriate resolution team.
7. At the resolution team level your call is researched, resolved, or escalated as appropriate. Due to the level of specialization required to maintain superior technical expertise at the team level, it is sometimes necessary to involve more than one support team in resolving a particular software problem. This is easily handled, as our support teams are all networked together and work as one to resolve whatever problems or issues arise.
8. If at any point in our service process, your expectations are not met by IBM, you may call our attention to this problem by asking to speak with a Duty Manager or by calling your local customer service executive. Escalations to an IBM manager will receive prompt attention and management focus. The Duty Manager or customer service executive will work with our technical staff to ensure your expectations are met and that your request is being handled appropriately. Further escalation procedures for complaint resolution are described in the following "IBM Complaint Management Process for Customer Complaints and Escalation Management" section of this RFP response.

B. IBM Billing and Ordering Support

1. Electronic Billing:
 - a. IBM Invoices OnLine allows you to view your invoices using an Internet browser. Once you register with us providing an e-mail address and your IBM customer numbers, you'll receive a login ID and password. Whenever new invoices are issued, you will receive an e-mail notification alerting you to this fact. You can then login to Invoices OnLine and view them. You can also search the invoice database by customer number, date range, invoice type or payment status to view previously delivered invoices.
 - b. Electronic Data Interchange (EDI) will transmit invoices electronically to you and can feed right into your inventory management and / or accounts payable systems. IBM charges no fee for electronic invoicing. If you are interested in this method contact us by calling the toll free number on the top of your invoice or by sending a note to address in the upper left corner of your invoice and we will have someone contact you regarding this option.
 - c. Eprocurement - IBM can help leverage your investment by integrating your eProcurement system with an IBM electronic catalog. We provide the catalog with the products and prices you are entitled to through your current agreement/contract with IBM. Your end users can shop for the IBM products they need and place their order electronically.
2. In the event there is a problem with your order or invoice, IBM telephone support for ordering or billing inquiries is available from 8:00 am to 8:00 pm EST, Monday through Friday, by calling 1-877-426-6006, option 2. IBM Customers with ordering inquiries also have the ability to submit an online request for order related inquiry.
3. there are two different methods available within Invoices On-Line to electronically communicate with us if you have a question, comment, or problem with an invoice. The invoice inquiry function available from Invoices On-Line automatically creates a prepopulated inquiry form that includes the customer number, invoice number, your name, account name, e-mail address and telephone number is prepopulated on the form, all you need to do is select from a list the reason for your inquiry or invoice dispute and submit the form to us. We will review your request and respond to you as quickly as possible. You can also send an e-mail to us by clicking on the "Contact Us" button.
4. Once received by the IBM customer service team (telephone or electronic), our goal is to respond to your inquiry within one business day. Most inquiries are quickly resolved. If at any point in the inquiry process, your expectations are not met by IBM, you may call our attention to this problem by asking to speak with a CSO (customer service operations) Manager. CSO Managers are assigned

geographically throughout the United States. Escalations to a CSO manager will receive prompt attention and management focus. They will work with our order and billing staff to ensure your expectations are met and that your request is being handled appropriately.

5. Further escalation procedures for complaint resolution are described in the following section.

C. IBM Complaint Management Process for Customer Complaints and Escalation Management

1. The Complaint Management Process is the business process IBM uses to manage customer complaints and escalations when "business as usual" or advertised or entitled support processes have been exercised but have failed to resolve the customer's problem in a timely manner. A customer complaint is defined as:
 - a. A request from a customer or IBMer to correct an unfulfilled customer expectation or commitment/promise.
 - b. A failure from a previous customer-IBM interaction to deliver on a commitment/expectation.
 - c. When the customer has attempted to exercise all or part of the advertised or entitled support structures to resolve a problem and is dissatisfied with its progress.
 - d. Customers may complain to an IBM executive. In these cases, these are referred to as executive complaints.
2. A critical situation is defined as:
 - a. A customer complaint that is escalated within IBM to a status of Critical. Escalation to a Critical Situation is considered when:
 - The problem is causing or is about to cause severe impact to the customer's business, or
 - Customer satisfaction has or is about to erode to the point that customer loyalty is in jeopardy, or
 - IBM determines that this problem is jeopardizing IBM's relationship with this customer and additional actions must be taken to save that relationship.
3. An alert is defined as:
 - a. A situation used primarily by the service/marketing offices to notify a pre-established list of people when a customer in that office/area has a critical product failure. This is often used for system down situations so that appropriate people are made aware of this situation and may act to resolve it.
4. A proactive situation is defined as:
 - a. A situation created internally by IBM for the purpose of complaint avoidance. When an IBM employee becomes aware of a situation which may lead to customer dissatisfaction if not addressed, they may proactively engage additional resources to resolve the problem. The customer may or may not be aware that the situation has been opened.
5. The Complaint Management Tool is a consolidated, worldwide information system that supports management of customer and executive complaints, critical situations, proactive and alert situations. It links complaint management personnel in all geographies within IBM business units, product divisions, headquarters, etc. for streamlined escalation management. The key Roles and Responsibilities of the Complaint Management Tool are:
 - a. Feedback Collector (FC), the person with initial contact with the customer.
 - Captures key customer information, such as contact information and problem description.
 - Categorizes the primary problem/issue so that the complaint can be routed to the most appropriate Resolution Owner.
 - b. Response Coordinator (RC), identifies the most appropriate RO or RTL or RA to engage in a situation when a request for assistance is made:
 - Ensures right RO/RTL from their organization is assigned.
 - Monitors progress against responsiveness indicators such as 7-day Close or Action plan, 48 hour RO acknowledgement, 48 hour RTL assignment, etc.
 - Keeps functional management informed.

- c. Resolution Owner (RO), acts as the customer advocate by serving as the primary IBM interface with the customer.
 - Contacts the customer within 48 hours to acknowledge ownership of the situation and determine the customer's conditions of satisfaction.
 - Develops and documents a customer-agreed to action plan within 7 working days of open.
 - Qualifies situations for the escalation process.
 - Engages a Resolution Team Leader and Resolution Assistants if assistance is needed to resolve the customer concerns.
 - Confirms with customer that the issue is resolved to their satisfaction and that the customer agrees to closure.
 - d. Resolution Team Leader (RTL), teams with the Resolution Owner to resolve the customer's issue:
 - Develops and manages the IBM internal resolution action plan.
 - Provides technical/organizational knowledge to help engage the right resources, including RAs.
 - Works in partnership with the Resolution Owner.
 - e. Resolution Assistant (RA), assists the RO or the RTL:
 - Performs action plan tasks.
 - Provides assistance in resolving the customer request or preventing recurrence.
 - f. Senior Executive Reviewer (SER) is the senior executive escalation process which provides:
 - Issues already escalated through worldwide customer satisfaction project offices whose resolution was not acceptable to the General Manager of the Resolution Owner's (RO) organization.
 - Situations affecting multiple customers which identify pervasive and complex issues involving multiple Divisions where the problems have not been resolved.
6. How the CM tool works to resolve customer complaints:
- a. A customer complaint is received by any customer contact person (the Feedback Collector).
 - b. The Feedback Collector records the customer's issue and contact information and categorizes the customer's primary problem. The FC requests assistance in assigning the appropriate Resolution Owner based upon the customer's issue.
 - c. The RO contacts the customer within 48 hours to acknowledge ownership, explore the customer's conditions of satisfaction, develops an action plan which may involve escalation to various levels of management across divisions, and resolves the customer complaint. If resolution assistance is needed, the Resolution Owner requests assistance for a Resolution Team Leader to be assigned within 48 hours.
 - d. The RO and the RTL document and execute the agreed-to action plan to resolve the situation.
 - e. When the customer agrees the situation is resolved, the RO closes the situation.

EXHIBIT C - VALUE ADDED SERVICES

Contact the Contractor for more details on these services and their related costs. All professional services **MUST** be related to the purchase of equipment from the Contract.

- A. **Cabling Infrastructure**
Cabling Infrastructure includes but is not limited to:
 - 1. Cat5 or greater cable
 - 2. Coax
 - 3. Fiber (SM and MM)
 - 4. All Cable trays and support materials
 - 5. Termination equipment
 - 6. IDF/MDF support (racks, termination equipment, tags, patch panels, etc.)
- B. **Network Electronics** - IBM supports all major Network Electronics vendors, but specializes in Cisco technologies.
- C. **Wireless Infrastructure**
During a typical IBM Wireless LAN engagement, IBM will conduct Site Surveys to determine installation requirements. IBM will procure, configure and perform a system test of the wireless equipment. IBM will then perform the physical installation of the wireless LAN bridge equipment at the designated site, as well as configure and test the Wireless LAN bridge equipment. Wireless LAN is defined as technology conforming to 802.11X standards.
- D. **High Bandwidth Infrastructure**
IBM provides High Bandwidth Infrastructure through a number of methods. IBM is defining this category to be "connectivity between distinct physical locations with speeds at OC3 or greater." This type of bandwidth capability is important to clients seeking an infrastructure to unify voice, video, and data over a single transport mechanism.
- E. **Data Center Services**
IBM provides a range of services for the build, move, upgrade, and/or security of a client data center. These services combine IBM labor (see rate table) with various specific service offerings or OEM technology to deliver the most comprehensive Data Center Services in the Industry.
- F. **Servers & Storage**
Servers and storage are key infrastructure components for an enterprise. Depending on the size and the client's legacy systems integration requirements, IBM offers server and storage solutions with the largest scalability in the industry. Whether in a school site or part of a data center server consolidation program, IBM can design a server/storage system, install, configure, train staff, and support that system for WSCA clients.
- G. **Operating Systems Engineering, Design, Deployment**
IBM provides a range of services for Operating Systems. From the Engineering of the build process, golden images for deployment, application testing, hardware / configuration testing to the configuration of the various services that are required to provide enterprise services from the platform.
- H. **Infrastructure Software**
IBM provides a complete suite of infrastructure software for our client's needs. IBM defines the following categories of software as Infrastructure Software and can provide IBM or third party products for each category
- I. **Web Portal**
As one of three types of information (data) that requires information transport, IBM offers a Web Portal solution through IBM's Web Connection Framework (WCF). Web Portal is the entry point for a client's information that is provided in a Browser based format to all constituencies in the enterprise. IBM takes Web capabilities to their logical application as a solution for client needs by connecting various parties to

conduct the "business" of the enterprise. IBM calls this type of activity 'e-business' and is widely credited with authoring that phrase.

J. Technical Services

Technical Services typically include the following:

1. Design/Engineering
 - a. Solution Design
 - b. Technical Engineering
 - c. Product Certified Specialists
 - d. Business and Technical services
 - e. Solution Installation
 - f. Hardware
 - g. Software
2. System Configuration
 - a. Configuration
 - b. Testing
3. Maintenance
 - a. Break/Fix Support
 - b. Software Maintenance
 - c. Network Maintenance
4. Training - Staff Training in Support of Infrastructure Solution
5. Support
 - a. Help Desk / Support Center – implement and operate support for end users.
 - b. Problem Management – reduce the number and impact of problems.
 - c. Change Management – provide smooth changes into system operations.
 - d. Knowledge Management – capture problem resolution and 'how to' procedures for reuse.
 - e. Event and Availability Management – monitoring and proactive network management, including components such as access management, configuration management, software distribution, etc.

K. Network Management Services such as Help Desk

Network Management can be handled either by installing tools on-site and run by the client technology staff (after appropriate training) or can be delivered as a remote service. Operation by client staff is covered in the procurement of Hardware, Software, and Training, therefore this section addresses remote network management specifically where the client procures a service and not the tools themselves.

IBM Remote Network Management Services is an out-tasking service for monitoring, managing and maintaining your I/T infrastructure seven days a week, twenty-four hours a day (7x24). This service is enabled by connecting the WSCA participant's network to the IBM Network Operations Center.

IBM provides network management services for active assets that reside on the network and support Simple Network Management Protocol (SNMP). These assets may be routers, switches, intelligent hubs, servers, etc.

IBM provides monthly and real-time on-line reports, as well as a secure Internet portal to view your network status in "real-time". This includes topology maps that graphically depict the managed assets within the network, thereby enabling efficient response to problems. Each month IBM reviews your reports, interprets your data and recommends improvements as required as part of the Engineering Analysis service.

Services include: Problem Management, Performance Management, Configuration Management for routers and switches, Change Management for routers and switches, and Internet Security Service.

L. Asset Management

IBM's Asset Management solutions can be provided on-site at the client location or as remotely delivered services. Our solution encompasses a closed loop set of processes to ensure that IT assets are managed from 'cradle to grave,' including procurement, tracking/operations, disposal, and associate financials. A central repository of assets is at the hub of the closed loop processes, with updates being provided by the processes that perform activity on or change the location of the asset.

M. Security

IBM delivers security solutions that help customers to assess their needs, protect data and assets, detect threats and intrusions, and recover from incidents. We even offer services to manage your security needs end-to-end. Together with our Alliance partners, IBM delivers best-of-breed IT solutions according to the industry-specific needs of any organization.

N. Training

IBM IT(Information Technology) Education Services is the largest IT training organization in the world. We deliver approximately 5,000 classes per month. IT instructional services include:

1. Solutions for innovative on-line learning technologies.
2. Resources for on-line instructional development and packaging.
3. Synchronous Tools/Techniques for On-Line Learning.
4. Classroom technologies and infrastructures.
5. Digital classroom of the future
6. Lab technologies and infrastructures.
7. Application technologies.

EXHIBIT D - CONFIDENTIALITY AGREEMENT

IBM Agreement for Exchange of Confidential Information

Our mutual objective under this Agreement is to provide protection for confidential information (Information) while maintaining our ability to conduct our respective business activities. Each of us agrees that the following terms apply when one of us (Discloser) discloses Information to the other (Recipient).

1. Disclosure

Information will be disclosed either:

- 1) in writing;
- 2) by delivery of items;
- 3) by initiation of access to Information, such as may be in a data base; or
- 4) by oral or visual presentation.

2. Obligations

Information should be marked with a restrictive legend of the Discloser. If Information is not marked with such legend or is disclosed orally, the Information will be identified as confidential at the time of disclosure.

The Recipient agrees to:

- 1) use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and
- 2) use the Discloser's Information for the purpose for which it was disclosed or otherwise for the benefit of the Discloser.

The Recipient may disclose Information to:

- 3) its employees who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares; and
- 4) any other party with the Discloser's prior written consent.

The Recipient may disclose Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order. [We cannot promise to enter into written agreements with State employees, who are subject to collective bargaining agreements that restrict terms and conditions of employment.]

3. Confidentiality Period

Information disclosed under this Agreement will be subject to this Agreement for two years following the initial date of disclosure.

4. Exceptions to Obligations

The Recipient may disclose, publish, disseminate, and use Information that is:

- 1) already in its possession without obligation of confidentiality;
- 2) developed independently;
- 3) obtained from a source other than the Discloser without obligation of confidentiality;
- 4) publicly available when received, or subsequently becomes publicly available through no fault of the Recipient; or
- 5) disclosed by the Discloser to another without obligation of confidentiality.
- 6) required to be disclosed by applicable law, or judicial or administrative order issued by a court or administrative agency of competent jurisdiction.

The Recipient may use in its business activities the ideas, concepts and know-how contained in the Discloser's Information which are retained in the memories of Recipient's employees who have had access to the Information under this Agreement.

5. Disclaimers

THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND.

The Discloser will not be liable for any damages arising out of the use of Information disclosed under this Agreement.

Neither this Agreement nor any disclosure of Information made under it grants the Recipient any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the Discloser.

6. General

This Agreement does not require either of us to disclose or to receive Information.

Neither of us may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.

The receipt of Information under this Agreement will not in any way limit the Recipient from:

- 1) providing to others products or services which may be competitive with products or services of the Discloser;
- 2) providing products or services to others who compete with the Discloser; or
- 3) assigning its employees in any way it may choose.

The Recipient will comply with all applicable export and import laws and regulations.

Only a written agreement signed by both of us can modify this Agreement.

Either of us may terminate this Agreement by providing one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

Both of us consent to the application of the laws of the State of New York to govern, interpret, and enforce all of our rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

This Agreement is the complete and exclusive agreement regarding our disclosures of Information, and replaces any prior oral or written communications between us regarding these disclosures. By signing below for our respective enterprises, each of us agrees to the terms of this Agreement. Once signed, any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:

By _____
(Authorized Signature)

Name (type of print): _____

Date: _____

Identification number: _____

Address: _____

Agreed to:

IBM/Rational Software

By _____
(Authorized Signature)

Name (type or print): _____

Date: _____

Agreement number: _____

Address: _____

After signing, please return a copy of this Agreement to the "IBM address" shown above.